




FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

SENSITIVE

MEMORANDUM

**TO: The Commissioners
Staff Director
Deputy Staff Director
General Counsel**

FROM: Office of the Commission Secretary 

DATE: August 7, 2002

**SUBJECT: Statement Of Reasons for MURs 4530, 4531, and 4547
John Huang**

**Attached is a copy of the Statement Of Reasons for MURs 4530,
4531, and 4547 signed by Chairman David M. Mason and Vice Chairman
Karl J. Sandstrom.**

**This was received in the Commission Secretary's Office on
Wednesday, August 7, 2002 at 11:21 a.m.**

**cc: Vincent J. Convery, Jr.
OGC Docket (5)**

Attachment

1864 504 4984



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

SENSITIVE

BEFORE THE FEDERAL ELECTION COMMISSION

In the matter of)

MURs 4530, 4531, and 4547

John Huang)

STATEMENT OF REASONS

On January 11, 2001, by a vote of 1-5,¹ the Commission voted not to approve the Office of the General Counsel's recommendation to find probable cause to believe that Democratic National Committee Vice Chairman for Finance John Huang violated 2 U.S.C. § 441e(a), a provision of the Federal Election Campaign Act of 1971, as amended, in connection with a total of \$150,000 in contributions from Jessica Elnitiarta and Panda Estates Investment, Inc. ("Panda Estates") made to the Democratic National Committee.

Section 441e(a) prohibits a foreign national from making a contribution directly or through any other person in connection with an election to any political office. This provision also prohibits any person from soliciting, accepting, or receiving a contribution from a foreign national. Jessica Elnitiarta and her company, Panda Estates, each provided \$100,000 checks to the Democratic National Committee. Jessica Elnitiarta and Panda Estates are not foreign nationals. Thus, John Huang did not violate 2 U.S.C. § 441e(a) merely by soliciting, accepting, or receiving checks from Jessica Elnitiarta and Panda Estates. Moreover, there is insufficient evidence presented in the General Counsel's Brief dated November 2, 2000 to show that John Huang knew or had reason to know² that the sources of Jessica Elnitiarta's \$100,000 check and at least \$50,000 of Panda Estates' check were foreign nationals.³ The Commission has

¹ Commissioner Smith voted affirmatively for the recommendation. Commissioners Mason, McDonald, Sandstrom, Thomas, and Wold dissented.

² Vice Chairman Sandstrom dissents as to this standard but agrees it has not been met. The Section 441e standard Commissioner Sandstrom applied required that a recipient of a contribution either had actual knowledge that the contribution was from a foreign national, or was aware of facts that would lead a reasonable person to conclude that there was a substantial probability that the source of the contribution was a foreign national.

³ In deposition testimony before the Commission, John Huang asserted his Fifth Amendment privilege with regard to these fact patterns. *General Counsel's Brief* dated November 2, 2000 at 14. *Baxter v. Palmigiano*, 425 U.S. 308 (1976), provides that the Fifth Amendment does not forbid an adverse inference from being

considered such knowledge in assessing liability for the receipt of foreign national contributions. Therefore, the Commission failed to approve the General Counsel's recommendations.

August 2, 2002

David M. Mason

David M. Mason
Chairman

by ESB

Karl J. Sandstrom

Karl J. Sandstrom
Vice Chairman

drawn against a party to a civil action when that party refuses to testify in response to probative evidence. *Id.* at 318. In such circumstances, evidence nonetheless is necessary to establish a violation of the Act. *General Counsel's Report* dated January 2, 2001 at 6-7; *United States v. Private Sanitation Industry Ass'n*, 899 F. Supp. 974, 982 (E.D.N.Y. 1994) ("[L]iability should not be imposed based solely upon the adverse inference. The government must produce 'independent corroborative evidence of the matters to be inferred' before liability will be imposed.") (citations omitted). Because the Commission was presented with no probative evidence or other testimony in the General Counsel's Brief dated November 2, 2000 that John Huang knew about the family and corporate business practices which led to the foreign national contributions at issue, the Commission could not properly conclude, based solely on an adverse inference, that John Huang violated the law.